IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10072 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BINDAL PROTEINS PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10072 of 2002

MR TANVISH U BHATT for Petitioner No. 1

MR. PREMAL JOSHI, AGP, for Respondent No. 1-5

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 01/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

At the instance of both the sides, this petition is taken up for final disposal.

The petitioner has a grievance against the orders at Annexures "L" and "M" to the petition dated 10.7.2002 and 18.7.2002 respectively by which eligibility certificate of the petitioner under which the petitioner was granted sales tax exemption under Incentives Scheme, was cancelled and coercive recovery was started. There is no dispute about the fact that no hearing was given to the petitioner before cancelling the eligibility certificate by order dated 10.7.2002. The order cancelling the eligibility certificate which had the effect of taking away the incentive said to have been already availed of by the petitioner, was an order adversely affecting the rights of the petitioner and therefore, the petitioner ought to have been heard before making of such order. Since the petitioner was not heard before the order was made, there is a clear violation of the principles of natural justice. The impugned orders, therefore, cannot be allowed to operate.

The learned counsel for the petitioner states that the petitioner will approach the concerned authority within three weeks from today in the matter. The learned counsel for the respondent authority states that the impugned order will now only be treated as a show cause notice and the petitioner's response shall be duly considered and a fresh decision will be taken in the matter after hearing the petitioner, without being coloured by the earlier decision, within four weeks from the date on which the petitioner makes the application. In the meanwhile, the impugned order and the impugned recovery notice will not be enforced.

The parties are directed to act as per the aforesaid arrangement. In view of this arrangement, no further orders are required to be passed. This petition stands disposed of subject to the aforesaid directions. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

(pkn)